

TS 1585

.P3

Copy 1

P E T I T I O N

OF

STEPHEN R. PARKHURST,

FOR

EXTENSION OF HIS PATENT

FOR

GINNING COTTON,

AND

BURRING WOOL.

— — — — —

NEW YORK:

PRESS OF WYNKOOP & HALLENBECK,
No. 113 FULTON STREET.
1866.



P E T I T I O N

OF

STEPHEN R. PARKHURST,
AL

FOR

EXTENSION OF HIS PATENT

FOR

GINNING COTTON,

AND

BURRING WOOL.



NEW YORK:
PRESS OF WYNKOOP & HALLENBECK,
No. 113 FULTON STREET.
1866.

WUWE

PETITION OF STEPHEN R. PARKHURST, OF BLOOMFIELD, NEW JERSEY, TO THE HONORABLE THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES, IN CONGRESS ASSEMBLED, FOR AN ACT OF CONGRESS TO BE PASSED EXTENDING OR AUTHORIZING AND EMPOWERING THE HONORABLE COMMISSIONER OF PATENTS OF THE UNITED STATES, ON DUE PROCEEDINGS HAD BEFORE HIM, TO RENEW AND EXTEND HIS PATENT FOR IMPROVEMENTS IN MACHINES FOR GINNING COTTON AND BURRING WOOL, FOR SEVEN YEARS, FROM AND AFTER THE 1ST DAY OF MAY, 1866.

STEPHEN R. PARKHURST, your petitioner, would respectfully represent to your Honorable Bodies that he was an original inventor, and, so far as he knows or believes, he was the first inventor of certain improvements in machines for ginning cotton and burring wool, for which he obtained Letters Patent of the United States, bearing date the 1st day of May, 1845, for fourteen years from the date thereof, which patent was extended for the term of seven years from the 1st day of May, 1859, and reissued to him on the 12th day of February, 1861, for the purpose of correcting and amending certain defects in the original specification and claims, which had been inadvertently made therein.

The object of this invention, as indicated by its title, is to remove the burrs and other foreign substances from wool before carding, thereby preventing damage to the card clothing, and effecting great saving in labor and material, and to free cotton from seeds and other substances injurious to the staple, thereby materially enhancing its value.

The machinery for taking the burrs and other foreign substances from wool, called burring machinery, is designed and adapted to be used both separately and in combination with a common carding machine. When used in combination with a carding machine, as it generally is, the burr cylinder is placed next the feed rollers, and, revolving with greater surface velocity than the feed rollers, draws the unburred wool from between them on to plain surfaces, between narrow, toothed, or serrated steel rings, placed upon a light, hollow, rigid, metallic cylinder, called a burr cylinder: the plain surfaces, being somewhat less in diameter than the serrated rings, allow the material to be drawn below the periphery of the steel rings on to the plain surfaces, and leave the burrs on top to be knocked off by a revolving guard over the burr cylinder into a trash receptacle in front. The wool, being thus freed from burrs, is stripped from the burr cylinder in the rear by a rapidly revolving card-clothed cylinder of the carding machine, and passes on through the machine in the ordinary process of carding.

Previously to my invention, various attempts had been made, especially on burry wool, to devise some means whereby the burrs could be removed and the wool rendered serviceable for manufacturing purposes, but with only partial success. And at the time of the introduction of my machines into use, the old hand modes of picking the burrs from the wool by hand, or cutting them out with common sheep-shears, was generally resorted to. But these modes were slow, tedious, expensive, and unreliable, and wool which was very burry, especially foreign wools of this description, was

only used to a very limited extent in this country, in consequence of the great difficulty and expense incurred in removing the burrs.

I had been a practical woolen manufacturer for many years, having been brought up at the business ; and, for some years prior to the date of my original patent, had been more or less engaged in experiments, endeavoring to perfect machinery which would completely remove the burrs from wool and the seeds from cotton.

My inventions, patented as before stated, are the result of these labors, and from which I had hoped, before this time, to derive a reasonable remuneration for the time, labor, and expense bestowed by me upon them, and in introducing them into public use, but which I have failed to do ; and this failure has not been owing to any fault, neglect, or want of effort on my part, but has been solely due to causes and circumstances beyond my control, and which it was impossible for me to foresee, avoid, or prevent.

To enable your Honorable Body to understand the merits of this application, and to act intelligibly upon it, permit me to state, somewhat in detail, the grounds upon which it is made, and the material facts connected with it

At the time my patent was originally granted, I had exhausted, to a very great extent, my pecuniary means in efforts to perfect the invention and procure the patent, and was, therefore, unable to incur the large outlay and expense requisite in erecting machinery, building machines, and putting them into the market, especially as the machine had not yet

worked itself into public favor, and found it desirable to associate with me some other person with means sufficient to meet these necessary expenses. Accordingly, on the 22d day of May, 1845—twenty-two days after the original patent was granted—I assigned one-third part of the patent to Israel Kinsman, of New York, and associated him with me in the business of making and selling the machines. On the same day, Kinsman assigned one-half of his one-third, being one-sixth of the whole, to James W. Hale, also of New York, for the same price and on the same terms that he had paid me for the one-third, thereby clearing his remaining one-sixth of the whole. Soon after these transfers, Kinsman and I commenced building these machines in Vesey street, New York; and in the fall of that year I went to Europe to attend to taking out patents there, leaving Kinsman to manage the business here, and Warren Holt, whom I appointed my attorney, to attend to my interests.

On the 9th of February, 1846, owing to disagreements between Kinsman and myself, an agreement in writing, prepared by Kinsman, was entered into between us, effecting, in part, a settlement of our partnership matters, whereby Kinsman was authorized to make and sell machines until he had been reimbursed his advances to the concern, and providing that he should then discontinue, and that I should thereafter have the exclusive right to make and sell the machines, each party accounting to the other for one hundred dollars profit on every machine.

Hall was not a party to this agreement, but was cognizant of it, and it was understood that his interest was

ingrafted upon, and went with, Kinsman's, and that he should share with Kinsman the profits derived from making and selling the machines, and that Kinsman would continue to carry on the business in Vesey street as before, until he should be reimbursed for his advances, and would then give up the business to me. But on the very next day after executing this agreement, Kinsman, though remonstrated with, and forbidden by my agent, removed the tools and machinery from the shop in Vesey street, New York, to Paterson, New Jersey (most of which belonged to me individually), and sold, or pretended to have sold, them to his confederate, one William Cundell, of that place.

Kinsman, in connection with Cundell, then continued to manufacture and sell these machines for a long time thereafter, and until long after he had been reimbursed for all his advances. He was requested to discontinue and leave the manufacture and sale of the machines to me, as provided in the agreement, but refused so to do, and continued to make and sell the machines, and to appropriate all the proceeds to his own use, or to share them with his confederate Cundell, and refused to account for, or pay over, any of them to me, or to give any information in relation thereto, denying that I had any rights in the invention, and claiming that he was the sole owner thereof.

In February, 1847, I caused a suit for an injunction and an account to be commenced against him, whereupon he repudiated my invention, and insisted that one Charles G. Sargeant, of Lowell, Massachusetts, was the first and original inventor, and claimed that he (Kinsman) had been operating under the Sargeant invention,

S

and not under mine. Considerable delay ensued before an application for an injunction could be made against him, and in the meantime Kinsman succeeded in selling a very large number of the machines in various parts of the country, and many of them on long credit.

After the argument of the motion for a preliminary injunction, and before the decision of the court, Kinsman, as he claimed, executed an assignment in writing, dated June 30, 1847, whereby he pretended to convey his interest in the invention (and which he then called the Sergeant invention) to his clerk, Calvin L. Goddard.

The preliminary injunction was granted against Kinsman on the 3d of July, 1847.

Thereafter, Goddard, nominally under his pretended right derived from Kinsman, went on with the manufacture and sale of the machines to a large extent.

A supplemental bill was then filed, and Goddard made a party, and a preliminary injunction against him was applied for and granted. The case came on for hearing, on pleadings and proofs, in May, 1849, and was elaborately argued on both sides before a full bench.

At the October term of the court, in 1849, Mr. Justice Nelson delivered the opinion of the court, holding that I was the first and original inventor, and that my patent was good and valid, and that the defendants, Kinsman and Goddard, had infringed it.

The case is reported in 1 Blatchford C. C. Reports, page 485, and at page 494 the court says :

"I am satisfied that the proofs establish, beyond all reasonable doubt, that Parkhurst, the plaintiff in the bill, was the first and original inventor of the improvement in the burring

"machine, for which Letters Patent were granted to him on
 "the 1st of May, 1845; that the improvement of Sargeant,
 "mainly relied on as anterior in time, was neither so far per-
 "fected by experiment, nor by a reduction to practical operation,
 "as to entitle it, in judgment of law, to the character or attri-
 "bute of an invention; and, also, that the imperfect and
 "unsatisfactory nature of the experiments made by Sargeant,
 "and his subsequent conduct in throwing aside his temporary
 "model, and wholly neglecting for years to follow up his
 "experiments, so as to produce a perfect machine, affords
 "strong and decisive evidence of an abandonment of the thing
 "as a failure."

At page 496 the court says :

"I am also of opinion that the change in the form of the
 "slots or teeth cut on the rings or plates which composed the
 "burring cylinder, and which, it is claimed, were made by
 "Kinsman or others subsequent to the date of the patent, and
 "in the course of the manufacturing of the article, was not a
 "substantial change in the construction from that described in
 "the patent."

A decree of reference was rendered in October, 1849, and pursuant thereto the master stated the account and made his report. A final decree on the report of the master, adjudging the amount due, directing payment, &c., was entered against Kinsman and Goddard, at the April term of the court, in 1851.

On the 16th day of September, 1854, an appeal was taken by Kinsman and Goddard, from the Circuit to the Supreme Court of the United States, on the decree entered in October, 1849, and the decree entered in May, 1851. This appeal was argued at the December term of the Supreme Court in 1855, and the decree in the court below was affirmed with costs and interest.

The opinion of the Supreme Court is at page 290, volume xviii. of Howard's Reports.

In 1848, Kinsman, having procured an assignment of the alleged Sargeant invention, caused an application to be made at the Patent Office for a patent. An interference was thereupon declared between this application and my patent. A large amount of testimony was taken in the case, much expense incurred, arguments had, and the decision rendered in my favor.

The patent having been extended on the 1st of May, 1859, and reissued on the 12th of February, 1861, was assigned by me to Francis Morris, Charles A. Buckley, and Robert W. Russell on the 18th of April, 1861.

Immediately after this re-issue, and as soon as competent evidence could be obtained of the continued infringements of the patent by said Calvin L. Goddard and his partner, Charles E. Hoffman, and as early as the 21st of May, 1861, a suit was commenced by the owners of said patent, in the Circuit Court of the United States for the Southern District of New York, against said Goddard & Hoffman for their infringements of the patent by the manufacture and sale of said machines. Other suits were commenced in the same court, about the same time, against the Seamless Clothing Manufacturing Company, and John Falconer; against the Glenham Company and Russel Dart; against Edward Haigh; against John W. Stitt and Benjamin Underhill; against Elias S. Higgins and Nathaniel D. Higgins; and in the United States Circuit Court for the District of Connecticut, against the Mill River Woolen Manufacturing Company and others; against Henry Hollister; against Nelson Kingsbury, and against one Frank B. Loomis. All of these parties, except Goddard & Hoffman, were users of the burring machines

which had been manufactured and sold by said Goddard and his partner. The defendants in all these suits, except the one against the Messrs. Higgins and Loomis, appeared by counsel and filed answers.

The answers, among other things, denied that your petitioner was the original or first inventor of the inventions patented, or of any of them; and alleged that, prior to said invention, the same had been known and publicly used in this country by numerous other parties, and that numerous prior patents had been granted to different parties for the same inventions, or substantial parts thereof. That among the parties who had such prior knowledge of said inventions, and who had publicly used the same, were Michael H. Simpson, the Saxonville Mills, Milton D. Whipple, Charles G. Sargeant, William W. Calvert, Alanson Crane, Francis A. Calvert, and Charles W. Brown, all at or near Boston, in the State of Massachusetts; and Roland G. Hazzard and Samuel Rodman, of Rhode Island; and George Bradley and William Cundell, of Paterson, New Jersey; and Samuel Conlard, Jr., and John Schly, deceased; and were also patented in the following-named patents: A patent to Eli Whitney, dated in 1794; a patent to Michael H. Simpson, in 1835; a patent to Charles W. Brown and Josiah Woleott, Jr., dated in 1837; a patent to John Schly, dated in 1836; a patent to Milton D. Whipple, dated in 1840, subsequently reissued and extended; a patent to William W. Calvert and Alanson Crane, in 1841; a patent to Francis Calvert, in 1843; and in a patent to Lewis G. Sturdevant, in 1841.

A very large amount of testimony was taken in these suits, amounting, on the part of the defendants, to seven

hundred and thirty-five printed pages, and on the part of the complainants to one hundred and ninety-nine printed pages, besides a large number of documents and papers both printed and manuscript, extending over a term of three or four years in taking said testimony. The cases in the Southern District of New York came to hearing, on pleadings and proofs before Mr. Justice Nelson, in August, 1864, several days being occupied in the hearing thereof. They were fully and ably argued before the court by George Gifford, Esq., of New York, for the complainants, and by Charles L. Woodbury, Esq., of Boston, for the defendants. The cases were afterward held under advisement by the court until May, 1865, when a decision was rendered by the court in each case, deciding that your petitioner was the original and first inventor of the improvements patented; that said patent is good and valid, and that the defendants had infringed the same. The decree of the court in the case against Goddard & Hoffman is in the words and figures following, that is to say :

"At a Stated Term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-five,
Present—The Honorable SAMUEL NELSON, an Associate Justice of the Supreme Court of the United States.

"FRANCIS MORRIS, CHARLES A. BULKLEY AND
 "ROBERT W. RUSSELL

agst.

"CALVIN L. GODDARD AND CHARLES E. HOFFMAN,

"The above-entitled suit, coming on to be heard on pleadings and proofs therein; and George Gifford, Esq., of counsel for

"the complainants therein, having been heard by the court in
"their behalf; and Charles L. Woodbury, Esq., of counsel for
"the defendants therein, having been heard by the court in
"their behalf; and the Court having duly deliberated and con-
sidered upon the matters at issue between the parties in said
"suit, it is hereby ordered, adjudged, and decreed that Stephen
"R. Parkhurst, mentioned in the bill of complaint in this suit,
"was and is the original and first inventor of certain improve-
ments in machinery for ginning cotton and burring wool,
"and of each and every of said improvements, described and
"patented in and by certain Letters Patent of the United States
"to said Parkhurst, dated the 12th day of February, 1861, on
"which this suit is brought; that said patent is good and valid;
"that the complainants now are, and ever since the 18th day
"of April, 1861, have been, the sole and exclusive owners there-
"of, and of the inventions and improvements granted and
"secured thereby; and that said inventions are, and each of
"them is, of great utility and value; and that the defendants
"have infringed said patent.

"It is hereby further ordered, adjudged, and decreed that an
"injunction do issue out of this court, in due form of law,
"against the defendants in the above-entitled suit, restraining
"and enjoining the said defendants, and each of them, in said
"suit, pursuant to, and in accordance with, the prayer of the
"bill of complaint filed in this suit; and that said injunction
"be, and the same hereby is, declared to be final and per-
petual.

"And it is hereby further ordered, adjudged and decreed that
"it be referred to Kenneth G. White, Esq., or R. E. Stilwell,
"Esq., Master of this court, residing in the city of New York,
"in said district, to ascertain, and take, and state, and report
"to this court an account of the gains and profits which the
"said defendants, Calvin L. Goddard and Charles E. Hoffman,
"and each of them, have realised, or received, or become
"entitled to, or which have arisen or accrued to them, or
"either of them, since the 18th day of April, 1861, from the
"manufacture, use, or sale of machines or machinery using or
"employing said inventions and improvements, or any or either
"of them, or any part thereof, mentioned in said bill of com-

"plaint; and that said complainants have the right, on such accounting, to cause an examination of the defendants, and each of them, *ore tenus*, and the production of their, and each of their books, vouchers, and documents, before said Master; and that said defendants attend from time to time before said Master, all as said Master shall direct, and that "the consideration of all other and further questions be reserved until the coming in of said report."

"S. NELSON."

The decrees in the other suits against the users of the machines were substantially the same as the above, varying only as to names of parties and titles of cases.

Pursuant to the foregoing decree, the defendant Goddard, in August last, was summoned to file a verified account in writing, before the Master, of the burring machines which he and the defendant Hoffman, or either of them, had made and sold since the 18th day of April, 1861, and also to produce before said Master their books of account, which account was required to be filed, and said books produced before the Master, on or before the 14th day of September, 1865. Great delay occurred in preparing and filing this account, and it was not got ready and filed until the 20th day of February, 1866, and not until an application to the court had been made for an attachment against Goddard, as for a contempt, in not complying with the said summons by filing the account. The court postponed this motion until the 20th of February, 1866, and allowed Goddard until that time to file said account. The books of account have not yet been produced, and the accounting is still delayed, and a long time will yet be required to complete said accounting, and ascertain the gains and profits which said Goddard & Hoffman have realized and received from their unauthorized use of said inventions.

From said verified account filed with the Master by said Goddard as above stated, it appears that, between the 20th day of April 1861, and the 17th day of June, 1865, he and his partner made and sold sixteen hundred and thirty-six burring machines and burring cylinders, using and employing the said inventions of your petitioner; and that they sold the same for the aggregate sum of one hundred and forty-one thousand five hundred and twenty-nine dollars and seventy-nine cents; and that between the same dates they made and sold about one hundred and thirty more of said burr cylinders in combination with burr-picking or burr-cleaning machines, which are claimed in said account to have been sold for cost, but the sums for which the latter machines were sold are not mentioned in said account. And your petitioner states on information and belief that said so-called burr-picking machines have been sold at a price varying from eight hundred to one thousand dollars apiece.

That they use and employ in their construction and operation the burring apparatus patented by him, as above stated, and are a plain and palpable infringement upon said patent, and that they derive their chief value from said improvements. Said Goddard claims in said account that he has a right to add to the cost of said sixteen hundred and thirty-six burring machines and burring cylinders a manufacturer's profit of fifty per cent. as due to him on the gross sales thereof, and that the difference between the cost of said machines and cylinders with the fifty per cent. profit thus added, and the sales prices of said machines, is due not to the aforesaid inventions of your petitioner, but to other improvements which other parties have made. The claim and pre-

tense that these machines derive their chief utility and value from inventions other than those of your petitioner have been persistently urged as one of the main leading defenses to this patent ever since it was set up by Kinsman and said Goddard in the suit against them, commenced in February, 1847, but this defense has heretofore amounted to nothing but expense and delay, and it is not believed that it will answer any other purpose on said accounting.

About thirty-five witnesses were examined in each of these suits on the part of the defendants, and thirteen on the part of the complainants. The defendants' witnesses, being called mainly to prove want of novelty and utility in the machines patented by your petitioner, were principally examined as to those points. And on their examination some of them testified as follows:

LEWIS RIPLEY, a witness for the defendants, of North Chelmsford, Massachusetts, testified that he was sixty years of age; that he was a woolen manufacturer and machinist, and had been in that business for over forty years; and that he was familiar with all kinds of woolen machinery, and with the machines in general use throughout the country for removing burrs from wool.

Being under *cross-examination*, at Boston, January 14, 1862, he was asked, and answered, as follows:

Cross Interrogatory 41.—State whether or not these Parkhurst burring machines have generally superseded all other kinds?

A. These Parkhurst machines are gradually and surely superseding all others, perhaps not from choice, but from necessity.

Cross Interrogatory 42.—Do you regard them as indispensable to have in the business?

A. I do.

Cross Interrogatory 43.—State whether or not you have an extended acquaintance among woolen manufacturers using these machines in their business, and how extensive?

A. My acquaintance extends more or less from Virginia to the Canada line; I have put these Parkhurst burring machines in operation in most of the principal woolen manufaetories throughout the woolen manufacturing States.

Cross Interrogatory 44.—State whether the machines have generally given good satisfaction to the parties using them, so far as you know?

A. Perfect; not one was thrown out, to my knowledge, after I commeneed with them.

Cross Interrogatory 45.—About what amount of saving of the staple do they effect over machines in use for burring wool prior to 1845, so far as you know?

A. I have taken a given quantity of wool, by no means heavy, and run it through a Calvert burring machine; the loss was twenty-six per cent.; the same kind and quantity of wool put through the Parkhurst machine would have weighed, after passing through the machine, its original weight, less the burrs.

LEANDER P. COBB, of Worcester, Massachusetts, a witness for the defendants, fifty-nine years of age, and a machinist, who had been engaged in building woolen

machinery for many years, being under *cross-examination* on the 21st of March, 1862, was asked, and answered, as follows :

Cross Interrogatory 41.—State how the second Parkhurst cylinder did its work at the Fox Mills.

A. I don't see but it did its work as well as they have made since ; they had six sets of cards, and put a Parkhurst burr cylinder on the first breaker of each set ; it worked very well.

Cross Interrogatory 42.—About how long after the first Parkhurst burr cylinder had been procured at the Fox Mills before the other five were procured ?

A. They came probably as fast as they could make them ; can't tell how long.

Cross Interrogatory 43.—Did they give good satisfaction ?

A. Yes ; I never heard any complaint.

CHARLES T. BARKER, another witness for the defendants, an extensive woolen manufacturer in Massachusetts, being under examination in chief by the defendants' counsel, on the 23d day of September, 1853, was asked, and answered, as follows :

Interrogatory 13.—Whether you regard the burr cylinder attached to a carding machine as being necessary to secure sufficient separation of the burrs from the wool, where an independent burring machine is used ?

A. We use them, and we consider it necessary—not absolutely necessary, but a convenience.

Interrogatory 14.—Please explain more fully ?

A. If the wool is very burry, it would be absolutely

necessary ; but if the wool was not very burry, it would not be necessary—it would be a matter of convenienee ; it is a good way of putting the wool on to the card, and we use them.

On the *cross-examination* of this witness by the complainant's counsel, he stated that his firm has seven sets of carding machines in use, and has a Parkhurst burring cylinder on every set; that they have so used them for fifteen years ; that they work well ; that the burring apparatus was procured of Calvin L. Geddard ; and that such burring apparatus was in general use on carding machines throughout the country.

DAVID LANE, another witness for the defendants, a machinist doing business at Lowell, who has long been engaged in building woolen machinery, was asked, and answered, as follows, on his *cross-examination* :

Cross Interrogatory, 14.—About how many ring burr cylinders have you seen on carding machines ?

A. I could not state the number ; I have seen a good many.

Cross Interrogatory, 15.—State whether or not, so far as you know, they are generally used on carding machines ?

A. I think they are.

JOHN GARDNER, Treasurer of the Salisbury Mills, Massachusetts, was also examined as a witness for the defendants. He states that he has superintended the woolen manufactory of that company since 1846 ; that they employ fifty-six sets of carding machines, and that burring cylinders are combined " with most of them, if

not all," and that they "do not consider a carding machine complete without a burring cylinder." And in reply to the question, "State whether or not, so far as you know, burr cylinders are generally used on carding machines?" he says "I think they are."

JAMES M. SHARP, another witness for the defendants, residing in North Chelmsford, Massachusetts, states that he has been engaged in the woolen manufacturing business for twenty-five years; that he is superintendent for the Baldwin Manufacturing Company, and is familiar with Parkhurst's machines; that that company has eleven of these machines in use; and that they *prevent all the burrs, but not all the dirt, from passing to the card cylinders.*

MICHAEL H. SIMPSON, another large woolen manufacturer of Massachusetts, was also examined as a witness for the defendants, to prove that the Parkhurst burring machines were neither new nor useful. On his cross-examination he stated that he had used these cylinders on his carding machines ever since 1851 or 1852, and had substituted these Parkhurst machines for what he called his "card burrers."

This witness is principal owner of the Saxonville Mills, Massachusetts, and was one of the persons mainly relied upon by the defendants to prove both want of novelty and utility in the machines of your petitioner.

JOHN R. CLARK, another witness for the defendants, who had been engaged in the woolen manufacture for forty years, and with Michael H. Simpson for twenty-one years, states that he never knew a burr cylinder

to be used in combination with a carding machine until 1847, and that this was the Parkhurst burr cylinder.

JOHN GIBBS, another witness for the defendants, states that he had been engaged in the woolen manufacture for about thirty-one years, and that he had most of the time been in the employ of Michael H. Simpson; that he never knew of a burr cylinder being used in combination with a carding machine until 1847 or 1848. This was one of Parkhurst's.

FOSTER NOWELL, another witness for the defendants, has for many years worked in a woolen factory, and is carder and spinner in the Lowell Company Carpet Mills, states that he never knew of a burring machine being combined with a carding machine until 1845. This was a Parkhurst machine.

LEWIS RIPLEY, another witness for the defendants, whose testimony has before been referred to, states that he never knew of a burring machine being used in combination with a carding machine until 1845, and that this was a Parkhurst machine.

The foregoing is some of the testimony on the part of the defendants, taken from their own record in the suits above mentioned, and fully establishes the facts (as shown by the defendants themselves) that the burring machines of your petitioner are of great utility and value, and have gone into general use, and are gradually but surely, superseding all other machines as the best means for removing the burrs and other foreign substances from wool before carding; and that he was the first to combine a burring apparatus with a carding machine, so

that the burring and carding process could be carried on by combined and continuous operations, thereby saving time, labor, and expense, and dispensing with the imperfect and cumbrous contrivances formerly in use for taking the burrs out of wool.

The decree of the court above granted also establishes beyond question that your petitioner was the original and first inventor of the inventions patented, and that the patent is good and valid.

Since said decree was rendered, numerous suits have been brought against parties infringing said patent by their unauthorized use of burring machines which had been made and sold by said Goddard ; and many of these suits are still pending and undetermined, and much time and money will be required in prosecuting them to completion ; and this, too, under the embarrassing disadvantage of not being able to arrest infringements by injunctions, but allowing the defendants to continue their use of the infringing machines with impunity, not only after the 1st of May next, when the patent expires, but also during the intermediate time. The law is well settled in this country, as I am advised by George Gifford, Esq., of New York, my counsel, that the court cannot grant an injunction in a patent case after the patent expires, and that it is a mere matter of discretion whether the court will grant a preliminary injunction during the continuance of the patent.

Applications have recently been made to the United States Circuit Court for the District of Massachusetts, being held by Judge Lowell, in Boston, for preliminary injunctions to be granted in suits just commenced

against the Lowell Manufacturing Company, the Boston Manufacturing Company, the Tremont Mills, and the Lawrence Manufacturing Company, for infringements of your petitioner's said patent by their unauthorized use of a large number of said burring machines, which had been made and sold by said Goddard in infringement of my patent. The defendants in these suits appeared by counsel, arguments were had, occupying several days, and many affidavits were read to the court by the defendants, mainly tending to show that the burning apparatus which the defendants had in use in combination with their carding machines was indispensable to be used in their business for removing the burrs from wool ; that the press of business in their establishments was very great ; and that the burning apparatus could not be removed from their carding machines without great labor, expense, and trouble ; and that suitable machinists were preoccupied with work to such an extent that it would require many months before the defendants could have the necessary alterations made in their machines ; and, moreover, that a large number of laborers would be thrown out of employment in their establishments in the meantime. The court, on the authority of the sewing machine case of Elias Howe, Jr. vs. Williams, in the district of Massachusetts, decided by Judge Sprague, March 8, 1860, where an application for a preliminary injunction was denied a few months before the expiration of the Howe patent, on the ground of the short time the patent had to run, denied the applications in these cases on the same ground ; viz., that the patent had so nearly expired that the court would not be warranted in enjoining the

defendants meantime from their infringements thereof, or expressing no doubt as to the validity of the patent, or the rights of the complainants to ultimately recover of the defendants in the suits. It will, therefore, be necessary to proceed to final hearing, on pleadings and proofs, in each of these cases, before any recovery can be had ; and with the uncertain prospect of recovering in the end an amount sufficient to cover the costs and expenses of prosecuting the cases to a successful termination ; especially when it is considered that the cases may be taken separately, by appeal, to the Supreme Court of the United States.

A very large number of burring machines which have been made and sold by said Goddard in infringement of my patent are now being used by various infringers in different parts of the country, and especially in the State of Massachusetts, and in other New England States. These machines are in daily use, and are in direct and palpable violation and infringement of said patent ; and the only way in which remuneration can now be obtained from these infringers is by bringing suits against them separately, and prosecuting the suits to final terminations ; and this, too, without the potent aid of injunctions, either preliminary or perpetual, and with the uncertainty of recovering sufficient in the end to reimburse for the costs and expenses required in carrying on the litigations. I have uniformly offered to settle with parties using these machines, and to give them a license under the patent on equally liberal terms, such as have been accepted and paid by other parties infringing the patent. But most of these infringers have declined to make settlements ; and they

have been greatly encouraged in this course from circulars and letters of said Goddard, representing that the patent will expire in May next ; and advising parties infringing not to settle or pay for their infringements, and to give no attention whatever to the claims made against them therefor. And since said recent decisions in Boston, the difficulty of making collections for said infringements has been greatly increased, owing to the impossibility of obtaining preliminary injunctions in Massachusetts, restraining infringements of said patent.

From the foregoing statements it will be seen that during the whole period of my patent, including both the original and the extended term thereof, incessant litigations and expenses have attended it, and that a large amount of litigation, without the aid of injunctions, is still to be carried on, if outstanding claims against infringers are collected. It will also appear from the foregoing statements that my burring machines are in common and general use throughout the woolen manufacturing States, and that they have uniformly superseded all other means for extracting the burrs from wool, causing great saving of time, labor, expense, and material, and that the patent has been repeatedly and uniformly adjudged by the United States courts to be good and valid. And it has also been decided by the same courts, in numerous cases, that burring machines, the same in construction and operation as hundreds of those now in unauthorized use throughout the country, were clear and palpable infringements upon my said patent, and injunctions have been granted restraining said infringements.

The patent, as before stated, was extended May 1, 1859. Not long after its extension, application was

made to the Honorable Commissioner of Patents for a reissue of it, in order to correct material defects which had been inadvertently made in the specification and claims thereof. Considerable delay occurred at the Patent Office, so that the reissue was not granted until the 12th day of February, 1861.

After obtaining the extension in 1859, the unsettled and threatening state of affairs in the Cotton States, where alone a market could be found for the sale of the machines for ginning cotton, rendered their continued introduction and sale there impracticable, and completely closed the market for these machines, which market has remained closed until very recently ; so that little, if anything, has been realized from the manufacture and sale of machines in these States since the patent was extended. Previously to its extension, large numbers of these machines had been made and sold, and were in successful use in many parts of the South ginning cotton, and gave very general satisfaction to the parties using them. At the time the war broke out, in 1861, large sums of money were due on account of machines which had been sold to parties residing in the Cotton States, amounting in the aggregate, as nearly as I can now ascertain, to from sixty to seventy thousand dollars. Nothing has been realized from this amount, and probably nothing ever will be, without incurring more expense in making the collections than the sums received will warrant. I have no doubt that, if the market for the sale of these machines had remained open at the South during the extended term of the patent, the demand therefor would have gradually and constantly increased, and that large gains and profits

would have been derived therefrom. But, as before stated, little or nothing has been derived from this source since the extension of the patent.

On the application for an extension of my patent in 1859, a statement and account in writing, under oath, was furnished by me to the Honorable Commissioner of Patents, of the ascertained value of my invention, exhibiting in detail my receipts and expenditures in relation thereto ; showing that, during the original term of the patent, I had realized between eleven and twelve thousand dollars therefrom, over and above my expenses in relation thereto, not allowing any compensation, however, for my own services, which had been given to matters pertaining to said inventions, almost exclusively, during a greater portion of the term of the original patent ; and that if these services were taken into account, and a reasonable allowance made therefor, I had realized absolutely nothing for the inventions ; though, as proved by numerous affidavits on said application, said inventions were of very great public value, some of the witnesses estimating the value thereof to the public as high as one million dollars.

These affidavits are somewhat numerous and voluminous ; but I beg leave herewith to call the attention of your Honorable Bodies to brief extracts from some of them, inasmuch as the facts and considerations therein set forth are more or less material and pertinent on this application, especially to show the great value of the inventions to the public, the earnest endeavors which I had made to realize something from them, my utter failure so to do, and some of the causes of such failure.

WILLIAM L. KING, then one of the firm of Naylor & Co., No. 99 John street, in the city of New York, in his affidavit, sworn to on the 14th day of February, 1859, states that he has been acquainted with your petitioner since 1846 :

"That he has been familiar with the difficulties said Parkhurst has contended against in the introduction of burring machines under said patent; that he does verily believe said Parkhurst has used due diligence in endeavoring to introduce "and make profit by his said invention; that he believes the said Parkhurst has pursued the said business with energy, perseverance, and discretion, and availed himself of every opportunity to make profit therefrom.

"That he is personally knowing to the value and importance of this machine to the public, and does verily believe that the same has been of immense value to the manufacturing interests of the country, particularly the woolen; that, from the saving by the use of machines under the aforesaid patent, over and above the machines previously in use, he believes the country has been benefited to an incalculable extent; and this deponent should estimate that a million of dollars would not exceed the benefit this machine has been to the public.

"That the durability of machines built under the patent in question is such that, when manufacturers are once supplied, but little demand arises for new machines, except for new establishments; and he does also verily believe that Israel Kinsman and Calvin L. Goddard did put into the market burring machines under such circumstances as to supply the demands of manufacturers, and deprive said Parkhurst of pecuniary benefit; and that said machines, having run for years, and most of them being still in working order, has limited the sale of machines, and impaired Parkhurst's business and profits."

This witness had been in part owner of the patent from 1848 until 1851, when he sold out his interest to Parkhurst.

NATHANIEL R. PARKHURST, of Worcester, Massachusetts, in his affidavit, sworn to on the 8th day of March, 1859, states:

"That about eight years ago he purchased two machines under the above-named patent for burring and cleaning wool; "that he had the same in use ever since, together with a third machine, purchased about two years since; that the above-named two machines have been in constant use for about "eight years, without perceptible wear; and this deponent has "never had to repair said machines in the least, and he does "verily believe that the same will last sixteen or seventeen "years longer, making a total time for the wearing out of said "cylinders of at least twenty-five years.

"That this deponent has been in the woolen manufacture for "over twenty years, and was in the habit of using the old burring machines; that the introduction of Parkhurst's steel "ring burring machines has been of very great benefit—

"First, in preventing the wear formerly in the burring "machines themselves.

"Second, in preventing the wear on the carding machines, "because the wool is taken so much freer from burrs and "foreign matters that the cards are not injured.

"Third, in decreasing the number of carding machines, be- "cause the fibre, by Parkhurst's burring machine, is straight- "ened out so much better that less carding is required.

"That this deponent does verily believe that said machines "have paid for themselves every year, over and above the cost "for doing the same work by the most approved machines "prior to their introduction; hence, that he verily believes "that said invention is worth about one hundred dollars per "annum for each machine.

"That this invention is not only a great benefit, not only in "the burring and carding, but the advantage extends over the "spinning, weaving, and finishing, as the burrs left in under "the old burring machines obstructed all the other operations "to a greater or less extent.

"That he does verily believe there has not been a more important invention brought before the public, regarding the woolen interests particularly; and he does verily believe that an extension of said patent would be an act of justice."

This witness also states that he is acquainted with your petitioner, and believes that I had exercised due diligence in introducing said inventions into public use, and had failed to receive a suitable remuneration for said inventions.

JOHN EDDY of New York, states, in an affidavit sworn to by him, on the 9th day of March, 1859, that he had been acquainted with your petitioner since 1847; that for about nine years prior to 1859 he had been more or less engaged in putting my burred machines in operation in different manufacturing establishments throughout the country; "that they have given universal and unqualified satisfaction, and that he does verily believe that the sale of machines by Kinsman & Goddard, at almost their cost price, has interfered very much with the profits of said Parkhurst, because the machines are so very durable."

"That this deponent is aware of several instances where "said burring machines have been running for more than "ten years, and that without any perceptible wear on the "cylinders, and without any repairs."

That he has also used said machines as a woolen manufacturer, and that

"He is able to testify to the fact, that the benefit resulting from the invention of said Parkhurst extends itself through the whole woolen manufacture. In the first place, the burring machines last much longer than any previously devised; second, the wool is more thoroughly freed from foreign matter, effecting; third, a partial carding of the wool; fourth

"the cards wear longer, and are not obstructed with foreign substances, fifth, the roving and spinning is more perfect, "being freer from burrs and substances, causing it to break; "sixth, the same may be said relative to the weaving; and "lastly, the finished goods are so much more perfect that "one person will pick over and remove any burrs from a piece "of cloth in the time usually occupied by two hands to do the "same work under the old machines.

" And, in conclusion, this deponent does verily believe that "the benefits resulting from said Parkhurst's surface-tooth "cylinder machines is so great that manufacturers would pay "one thousand dollars for each machine sooner than be without "it; and, in fact, he does verily believe that many parties would "abandon the woolen business sooner than go back to the "machine in use before the invention of Parkhurst's."

JOHN M. PHILLIPS, of Newark, New Jersey, of the firm of Hewes & Phillips, doing a large business in that place, states, in an affidavit sworn to by him on the 15th day of March, 1859, that his firm has manufactured burring machines, under said patent, for your petitioner, and also for Israel Kinsman :

" That he believes said machines will last considerably "longer than the term of the patent (fourteen years), and that he "does not know of any surface-tooth cylinders that have been "made under said patent which are either worn out or proved "inefficient in the burring or cleaning of fibrous substances.

" That this deponent believes said Parkhurst truly deserving of an extension of the above letters patent, in view of the "value the invention has been to the public, and the difficulties "experienced by said Parkhurst in obtaining a remuneration "therefrom." .

JOSIAH SEAGRAVES, a woolen manufacturer of Brooklyn, New York, states, in an affidavit sworn to by

him on the 19th day of March, 1859, that he has had in use several of the Parkhurst burring machines ever since 1849—ten years ago—and

“That the cylinders are still in good working order.

“That he believes the invention to be of great value to the public, because the whole woolen manufacture has been benefited thereby.”

That when the burrs are removed from the wool by said machines,

“The wool is clearer and more easily operated upon by all the other machines, and the cloth produced is greatly improved.”

“That all the machinery he is acquainted with, as being in use before the date of the Parkhurst patent, is utterly inefficient, compared with his, for removing the burrs and other substances from the wool.”

JESSE EDDY, a manufacturer of woolen goods, particularly of fine cassimeres, at Fall River, in the State of Massachusetts, in his affidavit, sworn to on the 21st day of March, 1859, states :

“That he has had six of Parkhurst’s burring machines, made under the above patent, in use for about nine years, and that the cylinders are in apparently as good condition as ever; that he does verily believe said surface-tooth cylinders will not wear out in twenty years, or become worn to such an extent as to prevent them operating correctly on the wool.

“That the said burring machines are indispensable to the woolen manufacturers; that in all machines which this defendant used before the introduction of Parkhurst’s cylinders, and in all machines he had knowledge of that were used by others, the wool went directly into the carding machines, and all the burrs were torn up and mingled with the wool.

“That the benefits resulting from the use of said Parkhurst’s burring machine consequently extended through the whole

"woolen manufacture, because the staple is so effectually freed
"from the burrs and foreign substances that all the subsequent
"operations of carding, roving, weaving, and finishing, can be
"carried on with so much more facility on account of the ab-
"sence of said burrs, and from the fact that the surface-tooth
"cylinder removes the pieces of foreign substances whole, while
"if the same were allowed to remain they would be broken
"up and dispersed among the wool, greatly to its injury.

"That this deponent does verily believe that all manufac-
"turers that have used the said surface-tooth burring cylinders
"would sooner pay one thousand dollars for each machine than
"be obliged to go back to the best machines this deponent
"knows of, that were in use before the invention of the Park-
"hurst.

NELSON CLEMENTS, a merchant in the city of New York, states in his affidavit, sworn to on the 23d day of March, 1859, that he had been engaged in the cotton business for about five years :

"That in the selling of cotton he had facilities for knowing the
"market price of various staples ; that he had sold cotton
"ginned by the ordinary saw-gins, and the same cotton ginned
"with Parkhurst surface-tooth cylinders, and that said cot-
"ton commanded in the market from three-quarters to one
"cent per pound advance upon the same staple ginned by the
"saw-teeth."

Prior to the extension of my original patent, May 1, 1859, Francis Morris, Charles A. Bulkley, Joseph V. Smedley, Nelson Clements, and Alexander McConockie had become owners of certain interests or rights in several of my patents relating to woolen and cotton machinery, or had been more or less concerned in building machines under said patents, or some of them ; and said Morris had also advanced various sums of money to said Bulkley, Smedley, Clements, and McConockie, which had been expended in building cotton-gins. It,

therefore, became important that the respective rights, obligations, and interests of all the parties concerned under said patents should be ascertained and provided for. Accordingly, an instrument in writing, bearing date the 1st day of August, 1859, was signed and executed by and between said Morris, Bulkley, Smedley, Clements, McConockie, and myself, providing that all said rights and property, claims, and demands of the aforesaid parties respectively should become vested in said parties as Trustees, with such powers and subject to such duties as therein provided; said parties thereby forming a joint stock company, and providing for the organization and conduct of its affairs. My said extended patent of May 1, 1859, was included in this arrangement, and conveyed, in trust, with the other patents and interests mentioned in said instrument.

The rights, titles, property, claims, and demands of said parties therein mentioned were considered as divided into four thousand parts or shares; of these Morris was entitled to eight hundred and fifty-three shares, Bulkley to eight hundred and fifty-two, Smedley to four hundred and twenty-six, Clements to four hundred and twenty-six, McConockie to four hundred and twenty-six, and your petitioner to one thousand and seventeen shares. Out of these shares nine hundred were to be disposed of by the Trustees, for the benefit of the association, and to raise funds to be applied for the purposes of the trust. Of this amount Morris contributed one hundred and ninety-three shares, Bulkley one hundred and ninety-two shares, Smedley ninety-six shares, Clements ninety-six shares, McConockie ninety-six shares, and your petitioner three hun-

dred and seventeen shares, leaving my interest therein only seven hundred shares.

Pursuant to said deed of trust, the Trustees therein named, on the 8th day of August, 1859, entered into an agreement with the Atlas Manufacturing Company, a corporation organized under the laws of the State of New York, whereby that company was granted an exclusive license and right to manufacture and sell machines under said patents for the term of two years from the date thereof. In consideration of which, said company was to pay to said Trustees, in trust for the parties concerned, fifty dollars for every No. 1 burring machine made by them under said patent, dated May 1, 1845; forty-five dollars for every machine known as No. 2 machines, which they should make; and forty dollars for every machine known as No. 3 machines; which payments were not required to be made before the expiration of three months after the receipt by said company of the price for which the machines had been sold respectively under this agreement, which expired August 8, 1861. Not more than fifty burring machines were made and sold, and my share of the profits amounted to very little if anything. As my patent had not yet been reissued, and the defects in the specification and claims corrected, it was thought not desirable to prosecute suits for infringements of it until this was done, and consequently infringements were continued with impunity during most of that time. But all my available means were employed in endeavoring to make collections and settlements for infringements, yet with only very limited success, and the result was that substantially nothing was realized by me from my inventions.

On the 18th of April, 1861, about four months preceding the expiration of this agreement, I had transferred all my right, title, and interest in the extended term of the patent, which had then been reissued, to Francis Morris, Charles A. Bulkley, and Robert W. Russell. I was then employed as agent to take charge of the manufacture and sale of these machines, and to attend to making collections and settlements under said patent for infringements thereof, which business I have attended to almost constantly, ever since. I was to be paid a salary for these services, but the amount I was to receive was not agreed upon, and was also to have one-half of the net proceeds accruing from the manufacture and sale of the machines, and one-half of the net proceeds derived from collections of infringements of said patent. One-sixth of this latter amount was to be paid by me to said Russell in consideration of his legal services in connection with the said patent. My object in making said transfer of the patent to Morris, Bulkley & Russell, was to enable me to raise money to pay for litigations and other legal proceedings necessary under said patent, and accordingly they advanced and paid large sums of money for these purposes.

At the time the patent was reissued, in February, 1861, claims to the amount of many thousand dollars were outstanding against parties who had infringed the original patent, in various parts of the country. But the patent having been reissued, these claims could not be enforced by legal proceedings under said reissued patent; consequently all outstanding claims for infringements prior to February 12, 1861, the date of said reissued patent, had to be given up and abandoned.

As before stated, the litigations and proceedings against infringers of said reissued patent have been incessant and widely extended ever since it was granted, many of which still remain undetermined, and must be carried on to completion, if anything is realized out of them. Consequently the litigation expenses have been enormous, amounting up to this time, as nearly as I can now ascertain, to about twenty-two thousand and seventy-five dollars.

About nine hundred and twenty-two burring machines have been made and sold, under said reissued patent, since it was assigned to Morris, Bulkley & Russell, in April, 1861. The price for which these machines have sold has varied from seventy-five dollars to one hundred and twenty-five dollars each, and a few of the larger ones have sold as high as one hundred and thirty-five dollars. The cost of building the machines during this time has constantly varied, owing to frequent changes in the cost of labor and material, but it was generally calculated to realize an advance of about twenty-five dollars on each machine, over their cost price. This would be less than a reasonable manufacturer's profit on machinery of this description. But it was rendered necessary to sell the machines at this low price in consequence of large competition in the market, occasioned by the great number of infringing machines which were constantly and rapidly being made and sold by said Goddard, who sold his machines, as he alleges, without reference to any patent fee, but simply for the usual manufacturer's profit, which he claims, in his account filed with the Master on the 20th day of February last, is fifty per cent.

There has been collected from users of infringing machines, since the reissue of said patent, for infringements thereof and for licenses under it, as nearly as I can now ascertain, about thirteen thousand five hundred dollars.

During the same time, a sum equal to about twenty-two thousand and seventy-five dollars was paid out, as before stated, for litigations and proceedings under said patent. The amount received from infringers, and for license fees under the reissued patent, is, therefore, about eight thousand five hundred and seventy-five dollars less than the sum paid out for expenses in conducting litigations and proceedings to stop infringements of it. It is estimated that there are over six thousand sets of carding machines now in use in the United States, one set generally consisting of a first and second breaker and finisher. My burring apparatus is used on the first breaker of nearly every set of these machines, in combination therewith; and is uniformly regarded by woolen manufacturers as indispensable in preparing the wool for the cards.

The value of this burring apparatus on each carding machine, in preparing the wool for the cards, cannot now be less than one dollar per day for each machine, in the saving and advantage which the manufacturer derives from its use over all other means for burring wool. The benefit and advantage which the public derive from it, as applicable to woolen manufactures, estimating the amount of saving caused by said invention at about fifty cents per day on each of the six thousand sets of carding machines in use in the United States, cannot be much, if any, less than three thou-

sand dollars per day, amounting in one year, of three hundred days, to the sum of nine hundred thousand dollars, and in seven years, to the enormous sum of six million three hundred thousand dollars. I regard the above sums as less, rather than over, a fair and legitimate estimate of the present value of said inventions to the public, so far as relates to woolen manufactures in this country; and without taking into account, the public value of the invention as applicable to cotton.

Owing to the continued litigations and proceedings under said patent for infringements thereof, since its extension, and to the uncertain amount of expenditures which would be required to complete the same, and because it could not be ascertained what amount, if any, of damages and license fees would be recovered, settlements have not been made between said Morris, Bulkley, Russell, and myself since the transfer of said patent to them in April, 1861, and the amount due me, as my share of the net profits, if any, derived from the manufacture and sale of the machines, and from collections of infringers under said patent, has not been ascertained. But, from the foregoing statements, your petitioner would respectfully submit to your Honorable Bodies, that it clearly appears that he has failed to obtain from the use of said invention "a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use;" and that this failure has not been owing to any neglect or fault on his part, but to causes which he could not foresee, avoid, or prevent, and which were entirely beyond his control.

He therefore prays that your Honorable Bodies will,

by a suitable Act of Congress, renew and extend said patent for the term of seven years from and after the 1st day of May, 1866; or that you will, by an Act of Congress, duly approved, authorize and empower the Honorable Commission of Patents of the United States, on due proceedings had before him, to renew and extend the same for said term of seven years from and after said 1st day of May, 1866.

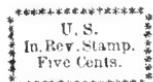
S. R. PARKHURST.

STATE OF NEW YORK, } ss.:
City and County of New York, }

On this 15th day of March, 1866, before me personally appeared Stephen R. Parkhurst, the above-named petitioner, and made solemn oath that he has read the foregoing petition subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated on information and belief, and as to those matters he believes it to be true.

[L. S.] MILES B. ANDRUS,
Notary Public,

In and for the city and county of New York.



YA 16386

LIBRARY OF CONGRESS



0 018 534 556 7